

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

RICARDO TALAVERA,

Defendant and Appellant.

A123554

(Humboldt County
Super. Ct. No. CR084154S)

I.

INTRODUCTION

Following the denial of a motion to suppress evidence (Pen. Code, § 1538.5)¹, Ricardo Talavera entered a negotiated guilty plea to transportation of a controlled substance (Health & Saf. Code, § 11352, subd. (a)). On appeal, Talavera's sole contention is that the heroin found in his pants pocket in the course of a patdown search following a vehicle stop should have been suppressed because the scope of the search violated his Fourth Amendment rights. We disagree and affirm.

II.

FACTS AND PROCEDURAL HISTORY

At about 11:30 a.m. on July 10, 2008, Eureka Police Officer Gregory Hill was parked at Humboldt and H Streets in Eureka conducting routine radar enforcement. He

¹ All further statutory references are to the Penal Code. Section 1538.5 allows a defendant to move to suppress evidence obtained in an improper search and seizure. (*People v. Williams* (1999) 20 Cal.4th 119, 125.)

saw a Pontiac sedan bearing an expired registration sticker pass by his location. The officer activated his emergency lights and pulled the Pontiac over. At the hearing held on Talavera's motion to suppress, the officer testified he lost sight of Talavera's hands; and at one point, Talavera appeared to be "reaching underneath the seat." Losing sight of Talavera's hands caused Officer Hill "some officer safety concern" because the officer "didn't know if he was reaching for something or if he was trying to hide something." For his own safety, Officer Hill drew his firearm.

Officer Hill testified that when he got to the vehicle, the female passenger "was agitated, screaming. Couldn't understand what she was saying, but you could tell she was upset." Officer Hill then had Talavera exit the vehicle and lie face down on the sidewalk where he was placed into handcuffs behind his back. He instructed the passenger, who was still screaming, to be quiet and to throw the car keys out the car window. Officer Hill then radioed for backup assistance. Officer Hill directed Talavera to stand up and asked if he was carrying a weapon. Talavera replied that he had a knife in his pocket. After finding a knife in Talavera's left pants pocket, the officer continued a patdown search. Officer Hill testified he "felt a hard substance in [Talavera's] right pants pocket. I didn't know what it was. I removed it from his pocket and found that it was three bindles of suspected heroin."

Officer Hill searched Talavera's wallet for identification, finding cash but no proof of identity. Talavera gave the officer his correct name. Asked his "custodial status," Talavera said that "he was on active parole and that he . . . had been deported back to Mexico and had arrived here back in Eureka just a couple of days ago." Talavera also disclosed that he was not a licensed driver, a status confirmed by the officer's dispatcher. Talavera was then placed under arrest.

When the suppression motion was argued, Talavera's counsel claimed that the seizure of the drugs from Talavera's pants pocket was an "unlawful intrusion," because it went "far beyond what normally should've happened on a mere traffic stop for expired tags." In opposing Talavera's motion to suppress, the prosecutor countered that the officer had specific and articulable facts justifying the patdown search which yielded the

evidence of drug possession. The prosecutor further argued that the legality of the patdown search was inconsequential because the drugs in Talavera's possession would have been inevitably discovered in the course of his arrest for being "a parolee in the country illegally" and driving without a license.

The court denied Talavera's motion to suppress, finding that the expired registration tag justified the stop of the car. The court then ruled that Officer Hill had the right to remove Talavera from the car because of his change of positions with his passenger, her hysterical behavior, and the officer's inability to see Talavera's hands for a period of time. The court concluded that "the[] subsequent events justify the search."

After the denial of his motion to suppress, the trial court accepted Talavera's guilty plea to one count of violating Health and Safety Code section 11352, subdivision (a) with an admission that he had served prison sentences for two prior felony convictions (§ 667.5, subd. (b)). Talavera was then sentenced to six years in state prison. This appeal followed.

III.

DISCUSSION

A. Standard of Review

In reviewing the ruling on a motion to suppress, the appellate court defers to the trial court's factual findings, express or implied, when supported by substantial evidence. (*People v. Hoyos* (2007) 41 Cal.4th 872, 891 (*Hoyos*); *People v. Ayala* (2000) 23 Cal.4th 225, 255; *People v. James* (1977) 19 Cal.3d 99, 107.) The power to judge credibility, weigh evidence and draw factual inferences is vested in the trial court. (*People v. James, supra*, at p. 107.) However, in determining whether, on the facts found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. (*Hoyos, supra*, 41 Cal.4th at p. 891; *People v. Ramos* (2004) 34 Cal.4th 494, 505.)

B. Denial of the Motion to Suppress

In arguing that the trial court erred in denying his motion to suppress, Talavera does not challenge the legality of the initial traffic stop and his ensuing detention.

Rather, he focuses solely on the scope of the patdown search, arguing that it was more intrusive than legally permissible under the Fourth Amendment. Talavera asserts that because Officer Hill admitted “he had no idea what the ‘hard object’ was that he felt in Mr. Talavera’s right pocket,” the warrantless retrieval of the heroin exceeded the scope of a lawful patdown search and violated his rights under the Fourth Amendment.

Given the suspicious conduct by Talavera and his passenger in switching places and Talavera’s furtive movements when Officer Hill approached the car, Officer Hill was clearly justified in handcuffing Talavera and conducting a safety-related patdown search for weapons. A police officer who lacks probable cause to arrest may nevertheless undertake a patdown search if the officer has reason to believe that the suspect may be armed and dangerous. (*Terry v. Ohio* (1968) 392 U.S. 1, 27.) The use of handcuffs did not transform the initial detention into an arrest, for which probable cause would have been required. (*People v. Celis* (2004) 33 Cal.4th 667, 675.)

The scope of the search, however, must be confined to discovery of a hidden weapon. (*People v. Dickey* (1994) 21 Cal.App.4th 952, 955-956 (*Dickey*).) Absent unusual circumstances, a police officer may not search a suspect’s pockets during a patdown search unless he feels an object that could reasonably be thought a weapon, or its incriminating character is “immediately apparent.” (*Id.* at p. 957, citing *Minnesota v. Dickerson* (1993) 508 U.S. 366.)

Talavera argues that the “hard substance” Officer Hill felt in Talavera’s pants pocket during the patdown search had no “ ‘incriminating character’ whatsoever” which could have justified its removal for inspection. He argues “[t]here is nothing unusual, much less unlawful, about having a ‘hard substance’ in one’s pants pocket. Many individuals carry coins, keys, watches and other ‘hard’ objects in their pockets. Indeed, that is precisely what a pocket is designed for.”

To the extent Talavera is arguing that a police officer conducting a lawful patdown search must be *absolutely certain* that the object he or she feels is a weapon before it can be removed and inspected, we disagree. Instead, the key inquiry is whether the object could reasonably be thought to be a weapon, which clearly was the case here. (*Dickey*,

supra, 21 Cal.App.4th at p. 956; *People v. Limon* (1993) 17 Cal.App.4th 524, 535 [when a police officer's frisk of a detainee reveals a hard object that may be a weapon, the officer is justified in removing the object into view].)

The conclusion that Officer Hill was justified in removing the hard object from Talavera's pants pocket to determine whether or not it was a weapon is reinforced by all the surrounding circumstances in this case—circumstances virtually ignored in Talavera's briefs. These circumstances include: (1) Talavera's acknowledgement at the initiation of the patdown search that he was armed with a knife; and (2) Officer Hill's observation that Talavera had "reach[ed] underneath the [car] seat" before he was ordered out of the vehicle. Given these circumstances, it was reasonable for Officer Hill to believe that the hard object he felt in Talavera's pants pocket could possibly be another weapon; and his removal of the object was proper.

However, assuming *arguendo* that the patdown search violated Talavera's Fourth Amendment rights, the motion to suppress was properly denied on the alternative theory of inevitable discovery. The doctrine of inevitable discovery provides that illegally seized evidence may be used where it would have been discovered by the police through lawful means. (*People v. Robles* (2000) 23 Cal.4th 789, 800.) "The purpose of the inevitable discovery rule is to block setting aside convictions that would have been obtained without police misconduct." (*Nix v. Williams* (1984) 467 U.S. 431, 444, fn. 4.)

Evidence at the hearing on Talavera's suppression motion established that at the time of his detention, Talavera was a parolee who was illegally in this country, that he possessed no identification and that he was driving without a license. Also, upon being stopped, he had attempted to evade arrest by switching places with his passenger. Officer Hill thus had ample reason to place Talavera under arrest. When arrested, the heroin concealed in Talavera's pocket would have been inevitably discovered during the booking process. (See, e.g., *People v. Clark* (1992) 3 Cal.4th 41, 143.) "Where the formal arrest follow[s] quickly on the heels of the challenged search of [appellant's] person, we do not believe it particularly important that the search preceded the arrest rather than vice versa. [Citations.]" (*Rawlings v. Kentucky* (1980) 448 U.S. 98, 111.)

IV.
DISPOSITION

The judgment is affirmed.

RUVOLO, P. J.

We concur:

SEPULVEDA, J.

RIVERA, J.